IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRIMINAL APPEAL NO.290 SB OF 1994

DATE OF DECISION: APRIL 20, 2007

Kashmira Singh

.....Appellant

VERSUS

State of Punjab

....Respondent

CORAM:- HON'BLE MR.JUSTICE RANJIT SINGH

1. **Whether Reporters of local papers may be allowed to see the judgement?**
2. **To be referred to the Reporters or not?**
3. **Whether the judgment should be reported in the Digest?**

PRESENT: Mr. Rakesh Kumar, Advocate for
Mr. Baljit Puri, Advocate,
for the appellant.

Mr. M. C. Berry, Sr.DAG, Punjab,
for the State.

*****

RANJIT SINGH, J.

Kashmira Singh and Darshan Singh were prosecuted for offences under Sections 302/34 and 323/34 IPC. After trial, Kashmira Singh was convicted for an offence under Section 304 Part II IPC and sentenced to suffer RI for a period of 7 years and to pay a fine of Rs.2,000/-. It was further directed that in default of payment of fine, he shall suffer further RI for a period of six months. This happened on 7.5.1994. The incident is of 5.4.1991. Appellant Kashmira Singh and Darshan Singh are younger brothers of Raghbir Singh,

deceased and Manjit Kaur, PW, is daughter of Raghbir Singh. 3-4 years prior to the incident, Raghbir Singh had taken loan from his brothers for marriage of his daughter, Manjit Kaur. He could not return the money. One day prior to the occurrence, appellant Kashmira Singh and Darshan Singh came to the house of Raghbir Singh and asked him to return the loan amount. There was minor quarrel between the brothers and the appellant left the place, threatening the deceased brother to arrange money by next morning, failing which they would deal with him in a different manner. It is then alleged that on 5.4.1991, which was the next morning, appellant Kashmira Singh and Darshan Singh came to the house of Raghbir Singh, armed with ***Khundi*** and ***Soti*** respectively. Kashmira Singh started abusing Raghbir Singh and Manjit Kaur tried to stop him from doing so. Raghbir Singh came out from his room to the courtyard and pleaded that he was not in a position to return the loan amount on account of his poverty. Thereafter, appellant Kashmira Singh and Raghbir Singh got engaged in scuffle and in the process Kashmira Singh gave a ***Khunda*** blow on the head of Raghbir Singh, who fell down and became unconscious. Darshan Singh gave blow, which hit Guddi (Manjit Kaur) and is alleged to have given ***Soti*** blow to Raghbir Singh as well. Kashmira Singh and Darshan Singh left the place alongwith their weapons, when alarm was raised. Injured Raghbir Singh was removed to Civil Hospital at Mansa. On advice of a doctor, he was taken to some other hospital and finally to Dayanand Medical College and Hospital, Ludhiana where he died on the same day. The matter was reported to the police, leading to prosecution of the appellant and Darshan Singh. Though prosecuted for an offence

under Section 302 IPC, appellant Kashmira Singh was found guilty for an offence under Section 304 Part II IPC and Darshan Singh was acquitted by giving him benefit of doubt. It is noticed by the trial Court that name of Darshan Singh was introduced with a view to put pressure on him regarding loan transaction etc.

Learned counsel for the appellant has not made any submission on the merits of the case. He has only pleaded for taking a lenient view against appellant Kashmira Singh. In this regard, the counsel would refer to the statement of Dr.Amandeep Singh to say that only one injury was found on the head of the deceased in the right temporal region. It is a case where altercation had taken place between the brothers and in the process of grappling, appellant Kashmira Singh made use of his ***Khunda,*** leading to fatal consequences. ***Khunda*** apparently was not taken with any intention or purpose to be used as a weapon of offence. It was rightly noticed by the trial Court that considering the relationship between the appellant and the deceased, it is possible to assume that in the ordinary course, the appellant would not have intended to cause death of his own brother for non-return of loan. There is no other enmity either pleaded or made out from the record. In addition, learned counsel for the appellant would submit that the appellant was sentenced to suffer 7 years rigorous imprisonment after his conviction, out of which he has undergone more than 3 years of actual sentence. This can be noticed from the order releasing the appellant on bail on 16.6.1994. The counsel would say that the incident is of 1991 and the appellant was convicted on 7.5.1994. He, as such, faced prosecution for over a period of three years. His

appeal is pending for the last 13 years and in all he has faced the trial, prosecution and the sentence staring at him for a total period of approximately 16 years. The counsel accordingly would say that the appellant has suffered enough when viewed in the background that he has undergone a period of more than three years rigorous imprisonment.

I see substance in the submission made by counsel for the appellant. This is a case of fight between two real brothers over a trivial issue. The facts would indicate that there was no intention on the part of the appellant to cause either injury, which could have caused the death or to cause death of his own brother. He happens to have died because of an action taken by the appellant in the moment of some indiscretion. As is said that crime is like a disease and correction not cruelty has the dominance in the sentencing calculus. Sentencing the appellant to undergo long incarceration at this stage would not reform him in any manner but may lead to his degeneration. Considering the nature and gravity of the sentence and the attending circumstances, I am of the view that the sentence already undergone by the appellant would be enough to meet the ends of justice and the requirement of law.

Accordingly, while dismissing the appeal, the sentence awarded to the appellant shall stand reduced to the period already undergone. The bail bonds and surety bonds, if any furnished in the trial Court, shall stand discharge.

April 20, 2007 **(RANJIT SINGH)**
khurmi **JUDGE**